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No. 87-6026

Supreme Court, U.S.
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JOSEPH F. SPANIO, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

HEATH A. WILKINS,
Petitioner,
vs.
STATE OF MISSOURI,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MISSOURI SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION

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STATEMENT OF THE CASE

Petitioner Heath A. Wilkins entered a plea of guilty on May 9, 1986, to first degree murder, §565.020, RSMo 1986, and after a hearing on punishment he received a sentence of death. Prior to his guilty plea and punishment proceeding, in which petitioner affirmatively requested that he be sentenced to death, a hearing was held on his competency to stand trial, and petitioner was found to be competent. The details of petitioner's competency hearing, guilty plea and sentencing, as well as the facts surrounding his stabbing murder of 26-year-old Nancy Allen, are set out in the opinion of the Supreme Court of Missouri affirming his conviction and sentence and will not be restated here. State v. Wilkins, 736 S.W.2d 409, 410-414 (Mo. banc 1987) (Petitioner's Appendix, hereinafter "Pet.App.", at 1-5).

Respondent does not dispute that the three claims raised by petitioner in his petition were properly presented to the Supreme Court of Missouri.

ARGUMENT

1. Constitutionality of Capital Punishment

At the time of his murder of Nancy Allen, petitioner was sixteen years and seven months of age. Under Missouri law, persons under the age of seventeen are under the jurisdiction of the juvenile code but may be certified for trial as adults. Sections 211.021, 211.031 and 211.071, RSMo 1986. Petitioner was so certified. State v. Wilkins, 736 S.W.2d 409, 412 (Mo. banc 1987) (Pet.App. 3). Petitioner asserts that "the imposition of a death sentence for an offense committed by a child [sic] below the age of eighteen constitutes cruel and unusual punishment" (petition at 5-6).

Although the constitutionality of imposing a death sentence upon young persons is currently before this Court in Thompson v. Oklahoma, No. 86-6169, cert. granted 107 S.Ct. 1284 (1987), petitioner's argument sweeps more broadly than the facts presented either in Thompson or in the case at bar. The defendant in Thompson was fifteen years old at the time of the crime, Thompson v. State, 724 P.2d 780, 784 (Okla.Cr. 1986), and the petitioner at bar was sixteen. Under the law of many states, including Missouri, seventeen-year-olds are adults and cease to be subject to juvenile-court jurisdiction. Thus, petitioner's selection of age eighteen as the constitutional limit for capital punishment demonstrates the arbitrary and unrealistic character of the "bright line" he attempts to draw.

As this Court has repeatedly held, the touchstone of capital sentencing is individualized consideration of each defendant's character and history and the circumstances of his crime. See Zant v. Stephens, 462 U.S. 862, 879 (1983). A defendant's chronological age is only one of many circumstances which weigh in his balance. If anything, it is a highly unreliable indicator, since an individual's maturity,

intelligence and sophistication may have little or nothing to do with his age and may vary widely from person to person. Categorically exempting an entire class of persons by reason of chronological age is precisely the kind of rigid and mechanical test that this Court has held should not be employed in capital sentencing. Barclay v. Florida, 463 U.S. 939, 950 (1983). A death sentence should not be automatically imposed, Sumner v. Shuman, ___ U.S. ___, 107 S.Ct. 2716, 2721-2723, ___ L.Ed.2d ___ (1987), nor should it be automatically foreclosed, Tison v. Arizona, ___ U.S. ___, 107 S.Ct. 1676, 1687, 95 L.Ed.2d 127 (1987). If limits are to be placed upon the imposition of capital punishment, they must be placed by the legislature, and "a heavy burden rests upon those who would attack the judgment of the representatives of the people." Gregg v. Georgia, 428 U.S. 153, 175 (1976). "nothing in society's standards of decency compel more than consideration of an eighteen year old's youth as a mitigating factor." High v. Kemp, 819 F.2d 988, 993 (11th Cir. 1987), quoting Prejean v. Blackburn, 743 F.2d 1091, 1090 (5th Cir. 1984); see also Roach v. Martin, 757 F.2d 1463, 1483 (4th Cir. 1985).¹

2. Standard of Competency

The standard of competency applied to petitioner, under which he was found competent, was whether "as a result of mental disease or defect [he] lacks capacity to understand the proceedings against him or to assist in his own defense." Section 552.020.1, RSMo 1986. Petitioner seeks to create a plethora of separate issues of competency for each action a criminal defendant might take: one for defendants proceeding to trial, another for those

¹A more extensive refutation of petitioner's present argument appears in the amicus curiae brief filed by the State of Kentucky and joined in by the State of Missouri and seventeen other states in Thompson v. Oklahoma, supra.

who plead guilty, yet another for persons who proceed pro se, and a fourth for defendants seeking to consent to a sentence of death.

Petitioner's principal authority for this theory is Westbrook v. Arizona, 384 U.S. 150 (1966), a brief per curiam opinion which pronounces no constitutional principles on the present issue. Petitioner's creative interpretation of Westbrook has been rejected by the vast majority of jurisdictions which have considered it. See United States ex rel. Heral v. Franzen, 667 F.2d 633, 637-638 (7th Cir. 1981); United States ex rel. Cvbert v. Rowe, 638 F.2d 1100, 1102-1104 (7th Cir. 1981) and cases cited therein. Rees v. Peyton, 384 U.S. 312 (1966), cited by petitioner, is equally inapposite. The sole issue addressed in Rees was the competency of a defendant under sentence of death to withdraw a petition for a writ of certiorari. Id. at 313-314. While the principles enunciated in Rees have been applied to capital defendants who have sought to waive other collateral remedies such as federal habeas corpus, e.g., Smith v. Armontrout, 812 F.2d 1050, 1052 (8th Cir. 1987), cert. denied 107 S.Ct. 3277 (1987), it has never been suggested that a defendant's competency to take a position on his punishment at a trial or guilty plea is somehow separate and distinct from his competency to understand and participate in those proceedings. Respondent submits that such a distinction is untenable.

Although respondent believes that the above principles and authorities are sufficient to warrant denial of this petition, it would additionally note that the evidence before the Circuit Court which accepted petitioner's guilty plea was sufficient to establish petitioner's competence to proceed regardless of the standard or standards which may be applied. See State v. Wilkins, supra at 411-414 (Pet.App. 2-5).

3. Proportionality

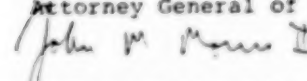
Petitioner asks this Court to determine the appropriateness of the death sentence imposed upon him. He completely fails to acknowledge the holding of this Court in Pulley v. Harris, 465 U.S. 37 (1984) that this presents no federal constitutional issue. The Supreme Court of Missouri extensively addressed the issue of proportionality as provided for under Missouri law, State v. Wilkins, supra at 416-417 (Pet.App. 7-8), and nothing in petitioner's self-serving and one-sided version of the facts renders that proportionality review erroneous, let alone unconstitutional.

CONCLUSION

In view of the foregoing, the respondent submits that petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. **87-6026**

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes now, Lew A. Kollias, Attorney for Petitioner, and Heath A. Wilkins, Petitioner, who is incarcerated in the Missouri State Penitentiary, to ask leave to file the attached Petition for Writ of Certiorari in the Supreme Court of the United States without prepayment of costs and to proceed in forma pauperis. Leave was granted allowing Petitioner to proceed in forma pauperis in the Circuit Court of Clay County and the Supreme Court of the State of Missouri. The Petitioner's affidavit in support of this Petition is attached hereto.

Respectfully submitted,

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